

**As Reported by the House Local and Municipal Government and  
Urban Revitalization Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 459**

**Representative Hottinger**

**Cosponsors: Representatives McGregor, J., Fessler, Gardner, Evans,  
Combs, Flowers, Uecker**

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**A B I L L**

To amend section 313.19 of the Revised Code to 1  
establish procedures for the commencement, 2  
determination, and appeal of an action to change a 3  
death certificate or coroner's verdict. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 313.19 of the Revised Code be amended 5  
to read as follows: 6

**Sec. 313.19. (A) As used in this section:** 7

(1) "Decedent" means the person whose death is recorded on a 8  
death certificate. 9

(2)(a) "Interested party" means a person that has a 10  
substantial interest in the correctness of a death certificate or 11  
coroner's verdict and includes, but is not limited to: 12

(i) The spouse of the decedent at the time of the decedent's 13  
death; 14

(ii) A natural or adoptive parent of the decedent; 15

(iii) A natural or adopted child of the decedent, or a parent 16

<u>of the natural or adopted child;</u>	17
<u>(iv) An executor or other fiduciary appointed by a court to care for the decedent's estate;</u>	18
<u>(v) The prosecuting attorney of the county in which the death certificate for the decedent was filed.</u>	19
<u>(b) "Interested party" does not include any of the following:</u>	20
<u>(i) A person who has been convicted of or pleaded guilty to any offense related to the death of the decedent unless and until the conviction is overturned, vacated, or otherwise set aside and the action overturning, vacating, or otherwise setting aside the conviction is not subject to further appeal or trial;</u>	21
<u>(ii) A person, other than a prosecuting attorney, who in the court's opinion is acting solely on behalf of another person who is not an interested party in order to advance the claims of the other person.</u>	22
<u>(3) "Substantial interest" means a contractual or other financial interest of the person asserting the substantial interest or of that person's heirs in the correctness of the death certificate or coroner's verdict. "Substantial interest" also means an emotional interest based upon a close familial relationship to the decedent and an interest based upon the death certificate or coroner's verdict exposing the person to a substantial possibility of civil liability for wrongful death, a products liability claim, or other similar civil liability.</u>	23
<u>(4) "Offense related to the death of the decedent" means any of the following:</u>	24
<u>(a) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, negligent homicide, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter;</u>	25
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(b) An attempt to commit, complicity in committing, or conspiracy to commit any of the offenses listed in division (A)(4)(a) of this section; 47  
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(c) Perjury, obstructing justice, or tampering with evidence in relation to any offense listed in division (A)(4)(a) or (b) of this section; 50  
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(d) Violating any law of this state or any municipal ordinance that is substantially similar to any offense described in division (A)(4)(a), (b), or (c) of this section; 53  
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(e) Violating any law of this state or any municipal ordinance that is a criminal offense in which the death of another is an element. 56  
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(5) "Person" means an individual, political subdivision of the state, governmental entity of the state, corporation, business trust, estate, partnership, or association. 59  
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(B) The cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificate filed with the division of vital statistics, shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, unless pursuant to this section the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change his the coroner's decision as to such cause and manner and mode of death. In any action or proceeding in which the cause of death and the manner and mode in which the death occurred is a genuinely contested issue, no trier of fact shall presume the correctness of a death certificate or coroner's verdict. 62  
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(C) A coroner may modify a death certificate or coroner's verdict as allowed by law, but no court shall order a modification of a death certificate or coroner's verdict except pursuant to 75  
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this section. 78

(D) An interested party may seek relief under this section by 79  
filing a petition within three years after the decedent's death. 80  
The three-year period is not tolled by the pendency of a criminal 81  
prosecution, proceeding for post-conviction relief, or appeal 82  
related to the death of the decedent. The petitioner shall name as 83  
a respondent the county coroner of the county in which the death 84  
certificate was filed and all other persons whom a diligent search 85  
would reveal to be interested parties if the Rules of Civil 86  
Procedure require the joinder. A petition may include as a 87  
respondent any interested party whose joinder is permitted by the 88  
Rules of Civil Procedure. The petition shall state in detail the 89  
relief sought and be accompanied by affidavits supporting the 90  
claims contained in the petition. If any issue raised in the 91  
petition addresses matters that require expert opinion, one or 92  
more of the affidavits shall be made by an expert whose 93  
qualifications, as shown in the affidavit, appear to comply with 94  
the provisions of the Rules of Evidence concerning expert 95  
testimony. The petition shall be served in accordance with the 96  
Rules of Civil Procedure. 97

(E)(1) Except as provided in division (K) of this section, no 98  
court shall hear a petition that is not filed within the time 99  
prescribed by this section or extend the time within which a 100  
petition may be filed. The court may dismiss any petition that 101  
fails to properly join and serve any interested party required to 102  
be joined if it appears to the court that the petitioner, through 103  
a diligent search, should have identified that party as an 104  
interested party, and after being alerted to the failure to join 105  
an interested party by the court or by another party, the 106  
petitioner fails to make reasonable efforts to join the interested 107  
party. 108

(2) A court with which a petition has been filed under this 109

section shall dismiss the petition without a hearing if the 110  
petition and accompanying affidavits present only evidence that is 111  
substantially the same as evidence that was used or available for 112  
use in a prior criminal proceeding or related collateral 113  
proceeding by any interested party and if the court in the prior 114  
proceeding entered a judgment adverse to that interested party's 115  
claim. Evidence shall not be deemed unavailable for use in a prior 116  
criminal proceeding or related collateral proceeding solely 117  
because it was not presented in that proceeding or was excluded 118  
from consideration by the trier of fact in that proceeding on 119  
procedural grounds. 120

(3) In an action brought under this section, the court, in 121  
its discretion and on any terms that it considers appropriate, may 122  
permit a person, except a person described in division 123  
(A)(2)(b)(i) of this section, that would not otherwise qualify as 124  
an interested party to be joined as a permissible party and to 125  
participate in the action if the court determines that the joinder 126  
of the person is necessary to protect the interests of the person. 127  
A court's decision to grant or deny a request for joinder of a 128  
permissible party is final and not appealable. 129

(F)(1) If a petition is filed in a timely manner pursuant to 130  
this section during the pendency of a criminal prosecution, 131  
proceeding for post-conviction relief, or appeal related to the 132  
death of the decedent, upon motion of the prosecuting attorney, if 133  
the petitioner is a person charged with an offense related to the 134  
death of the decedent, the court shall stay the proceedings on the 135  
petition until the defendant in the criminal prosecution, the 136  
petitioner in the proceeding for post-conviction relief, or the 137  
appellant in the appeal has exhausted the defendant's, 138  
petitioner's, or appellant's state and federal rights of direct 139  
appeal and collateral review. No court shall stay or continue the 140  
proceedings if the stay or continuance would unduly prejudice the 141

rights of any other interested party joined in the action at the 142  
time of the petition. 143

(2) Upon motion of the prosecuting attorney, the court may 144  
stay the proceedings on any petition in which the petitioner is 145  
not a person charged with an offense related to the death of the 146  
decedent, if the court finds that further proceedings could 147  
compromise a criminal prosecution, proceeding for post-conviction 148  
relief, or appeal related to the death of the decedent, unless 149  
such a stay or a continuance would unduly prejudice the rights of 150  
any other interested party. 151

(G)(1) If the court finds that a petition filed pursuant to 152  
this section meets all of the requirements set forth in this 153  
section, the court shall set the petition for hearing. Before the 154  
hearing the court may, but need not, do any of the following: 155

(a) Require that the coroner or any other party file and 156  
serve an answer to the petition; 157

(b) Grant to any party the right to conduct discovery under 158  
the Rules of Civil Procedure; 159

(c) Permit the filing of, and rule upon, any motions 160  
authorized by the Rules of Civil Procedure; 161

(d) Issue any order that the court considers necessary to a 162  
fair determination. 163

(2) At the hearing the petitioner shall have the burden of 164  
going forward with evidence and shall have the burden of proving 165  
by a preponderance of the evidence that the death certificate or 166  
coroner's verdict is in error. The hearing shall be conducted 167  
without a jury and in accordance with the Rules of Evidence. 168

(H) A dismissal of a petition for failure to comply with any 169  
of the provisions of this section, or for failure of proof after a 170  
hearing, is a dismissal with prejudice to the filing of another 171

petition related to the death certificate or coroner's verdict in 172  
question by all named petitioners and against all persons whose 173  
interest is in privity with any of the petitioners and all joined 174  
parties. 175

(I) If a party to an action brought under this section 176  
appeals the final decision of the court, the court of appeals 177  
shall do one of the following: 178

(a) If the final decision modifies the death certificate or 179  
coroner's verdict, conduct a review de novo; 180

(b) If the final decision affirms the correctness of the 181  
death certificate or coroner's verdict, determine whether the 182  
trial court abused its discretion with regard to an appealable 183  
matter and either affirm the decision or remand the case to the 184  
trial court for further proceedings. 185

(J) No change in a death certificate or coroner's verdict 186  
made pursuant to this section shall be the basis of a new trial 187  
for, or the withdrawal of any plea to, any offense related to the 188  
death of the decedent unless a court determines a change in a 189  
death certificate or coroner's verdict to be a proper basis in a 190  
criminal case for postconviction relief under sections 2953.21 to 191  
2953.23 of the Revised Code. 192

(K) The prosecuting attorney may file a petition beyond the 193  
time period prescribed in division (E) of this section, or may 194  
file a subsequent or successive petition, upon the discovery of 195  
new evidence that, in the opinion of the prosecuting attorney, 196  
warrants such a filing in order to correct a manifest injustice. 197  
Any other interested party may file a petition beyond the time 198  
period prescribed in division (E) of this section only upon the 199  
discovery of new evidence that the petitioner was unavoidably 200  
prevented from discovering within that time period. 201

(L) Nothing in this section shall be construed or applied to 202

give a person charged with an offense related to the death of the 203  
decedent any right to conduct discovery or to have access to 204  
discovery beyond that which the person is entitled under the law 205  
as applicable to a criminal prosecution. 206

**Section 2.** That existing section 313.19 of the Revised Code 207  
is hereby repealed. 208

**Section 3.** This act is intended to be a remedial measure. It 209  
is the General Assembly's specific intent that those provisions of 210  
this act that prohibit a person who has been convicted of or 211  
pleaded guilty to any offense related to the death of a decedent 212  
from maintaining an action under this act, unless and until the 213  
conviction is overturned, vacated, or otherwise set aside and the 214  
action overturning, vacating, or otherwise setting aside the 215  
conviction is not subject to further appeal or trial, as well as 216  
the provisions that require or permit a stay of proceedings on a 217  
petition during the pendency of a criminal prosecution, proceeding 218  
for post-conviction relief, or appeal related to the death of the 219  
decedent, shall be applied retrospectively to all cases filed 220  
under section 313.19 of the Revised Code, whether or not the case 221  
is pending on the effective date of this act. All other provisions 222  
of this act shall govern all proceedings in actions brought after 223  
the effective date of this act and also all further proceedings in 224  
actions pending on that date, except if in the court's opinion the 225  
application of those provisions in a particular action would not 226  
be feasible or would cause injustice, in which event former 227  
procedures apply. 228